



LEGAL BRIEFS

From the Fort Knox Legal Assistance Office

LIVING WILLS

What is a Living Will?

A living will is a legal document completely separate from a person's last will and testament. A last will and testament specifies how a person's property will be distributed at death, and can be used to specify guardians for minor children. A living will, also known as an advance medical directive, sets forth a person's wishes for continued medical treatment in the event of a life-ending illness or injury. It embodies the person's choice to continue or forgo continued treatment. In a sense, the person is looking forward, and expressing the desire to be disconnected from that life prolonging equipment or the desire to remain connected. A living will is signed and either witnessed or notarized. If done correctly, it is binding on the hospital, the doctors, and the family.

What happens without a Living Will?

If the patient does not have a living will, family members and physicians may be placed in the very difficult position of deciding whether and when to "pull the plug." Quite possibly there will be opposing viewpoints with bitterness inevitable. The stress and emotions of the situation will make the decision that much more difficult to make. The physician will have to balance what he believes are the desires of the patient with his or her own best medical judgment. In addition, the doctor will consider potential civil or criminal liability as well. A living will is a definitive statement of the individual's intent, relieving both the doctor and the family from the burden of having to decide.

Health Care Surrogates:

Depending on the state in which you live, the living will may be your opportunity to name what the law calls a health care surrogate. In Kentucky, individuals, in their living will, can name a family member, friend, or anyone else as their surrogate. The living will may (if you want) direct that the surrogate take certain actions. Those actions include discontinuance of life-prolonging treatment and the withholding or withdrawal of artificially provided food, water, or other nourishment or fluids. The surrogate is authorized to carry out those decisions, only after the attending physician determines the person is permanently unconscious or is otherwise in a vegetative state and that consciousness will not be restored. Other states may or may not require the naming of a surrogate. Those states may, by default, leave the health care decision(s) up to your closest family member, usually a spouse or child. Or, the living will may simply direct that

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the hospital and/or doctor take (or not take) certain actions. In all cases, a doctor or doctors must determine that the person has a terminal condition and that the chance for recovery is slim if not impossible. Once you make a living will, a copy of the document should be given to your physician and made a part of your medical records.

What Legal Assistance Can Do:

The Legal Assistance Office can answer questions about the living wills and can assist in their preparation. Living wills are executed on a walk-in basis. An appointment is not necessary. In most cases, we recommend execution of a living will along with a last will and testament. Preparation of last wills and testament are done by appointment only. Our office is located in Pike Hall, Building 1310, at the corner of Knox Street. and 3rd Avenue. Telephone 624-2771 to schedule an appointment or for more information.